

Exhibit C

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. FUTURES EXCHANGE, L.L.C., and)
U.S. EXCHANGE HOLDINGS, INC.,)
) No. 04 CV 6756
)
Plaintiffs,)
)
vs.) Chicago, Illinois
)
BOARD OF TRADE OF THE CITY)
OF CHICAGO, INC., and CHICAGO)
MERCANTILE EXCHANGE, INC.,) January 23, 2007
)
Defendants.) 11:51 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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APPEARANCES (continued:)

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11:51AM

12:21PM 1 regulations. CFTC has 180 days to approve a new market
12:21PM 2 application. They did it in a month and a half shorter than
12:21PM 3 that, your Honor. So they were up and approved within four
12:21PM 4 days of their proposed start date.

12:21PM 5 So then the question is, "well, the
12:21PM 6 misrepresentations and all this other misconduct that we
12:21PM 7 allege may not have slowed us down significantly, but there
12:21PM 8 were customers who were not ready to start at the time we
12:21PM 9 started, and, therefore, our entire enterprise failed, that's
12:21PM 10 our anti-trust case."

12:21PM 11 Okay. So, your Honor, in order to credit Plaintiffs'
12:21PM 12 claim that it failed to generate a customer base because of
12:21PM 13 our efforts in Congress and at the CFTC, what do we have to
12:22PM 14 imagine? We have to imagine that when the CME and CBOT
12:22PM 15 responded negatively to a CFTC request for comment and to a
12:22PM 16 congressional request for testimony, when we did that, and we
12:22PM 17 testified that there were serious problems with the contents
12:22PM 18 of the application, that some significant number of highly
12:22PM 19 sophisticated financial service firms and big-time speculators
12:22PM 20 behaved in a very strange way, your Honor. Objections are
12:22PM 21 made to an application filed by USFE, City Bank, Deutsche
12:22PM 22 Bank, REFCO, Mann, all the big financial firms in this
12:22PM 23 country, collectively throw up their hands and you hear them
12:22PM 24 muttering like Captain Renault in Casablanca, "I'm shocked,
12:23PM 25 shocked to find that there's gambling going on in this

12:23PM 1 establishment." I mean, what did anybody expect when comments
12:23PM 2 were requested and when everybody knew that we had objections?

12:23PM 3 Okay, we're not going to defend the comments. We
12:23PM 4 don't have to defend whether they are or aren't
12:23PM 5 misrepresentations. Although, if you look at our slides, your
12:23PM 6 Honor, and if you'll look at, I guess it's slide 30, you'll
12:23PM 7 see that none of these things are misrepresentation and no
12:23PM 8 case can be made. But passing that, the question is, what
12:23PM 9 significant potential customer of this exchange failed to sign
12:23PM 10 up and/or failed to trade because of something that was said
12:23PM 11 in Congress or to the CFTC by the CME.

12:23PM 12 So far we've been trying for years to get the names
12:23PM 13 and identities of those customers. We know, because of one
12:23PM 14 random document that came to us, that the plaintiffs keep a
12:24PM 15 record of everybody who traded every month and have the names
12:24PM 16 of everybody who was on their exchange. So far we've only got
12:24PM 17 one month of that information in their production, your Honor.
12:24PM 18 We also know that they called on customers all over and they
12:24PM 19 know who did or who didn't sign up. They haven't given us the
12:24PM 20 names.

12:24PM 21 Remember the time line. They could not open before
12:24PM 22 February 1, 2004. They were approved on February 4,
12:24PM 23 generously in advance of the 180-day limit. They chose not to
12:24PM 24 open until the following Sunday night, which makes sense from
12:24PM 25 a financial thing, ordinarily you open these markets on a

12:24PM 1 Sunday night. So February 8th, 2004. The complaint was filed
12:24PM 2 in 2003. Who are the people who did not sign up who represent
12:24PM 3 any significant portion of this market? Give us their names.
12:25PM 4 Bring in an affidavit saying that. If necessary, give us ten,
12:25PM 5 twenty days to take their depositions and see if we can shoot
12:25PM 6 holes in it.

12:25PM 7 If we can't shoot holes in it, and if they have a
12:25PM 8 substantial portion of the market that was foreclosed through
12:25PM 9 our action, this looks like a real case and we're going to
12:25PM 10 move forward. But if based on the answers they've given so
12:25PM 11 far, and the information in their documents that we've seen so
12:25PM 12 far, and their public admissions which are in the documents
12:25PM 13 we've given to you, in that slide set we've given you, there
12:25PM 14 are no such people, then, your Honor, we've been wasting our
12:25PM 15 time for 3 years, we've been wasting our money for 3 years,
12:25PM 16 and we're going to continue doing that for the next 2 years at
12:25PM 17 an even more rapid pace and at an even more expensive pace.

12:25PM 18 So we've got a suggestion and I think it's
12:25PM 19 straightforward. We're going to ask leave from your Honor to
12:26PM 20 file a motion for summary judgment. The motion for summary
12:26PM 21 judgment will essentially be in terms that I've just stated to
12:26PM 22 you and with the documents and admissions in the document
12:26PM 23 we've given to you. We'll do that quickly, your Honor. I
12:26PM 24 think 30 days, John thinks 45 days, but quickly, whatever is
12:26PM 25 to your liking. We ask the plaintiffs to respond within

12:26PM 1 30 days of completing their discovering of CBOT on costs. We
12:26PM 2 expect that their response would include affidavits refuting
12:26PM 3 our statement that there are no significant group of customers
12:26PM 4 who were turned away from their market because of anything we
12:26PM 5 said or did.

12:26PM 6 The reason I have so much confidence about this, your
12:26PM 7 Honor, is because when we asked them these questions, they
12:26PM 8 responded with 3 names, and of those 3 names they, first of
12:27PM 9 all, didn't say that either CME or CBT had done anything to
12:27PM 10 those 3 people. They just mentioned 3 names who didn't use
12:27PM 11 that market. Of those 3 names, one wasn't a trader, it was a
12:27PM 12 vendor of some sort; another was a trader, and we believe we
12:27PM 13 found from their own documents that he was, in fact, using
12:27PM 14 their market; and the third was a firm that didn't trade at
12:27PM 15 all but just represented customers, and we've got two quotes
12:27PM 16 from that firm, Rand Financial, in the slides we gave you
12:27PM 17 explaining, the president of Rand Financial saying why he
12:27PM 18 didn't use that market and it certainly had nothing to do with
12:27PM 19 us.

12:27PM 20 We also have a ton of documents in there from their
12:27PM 21 own people explaining why they failed, and especially the ones
12:27PM 22 that were contemporaneous with their failure, not the ones
12:27PM 23 that were grafted within the last six months but the ones that
12:27PM 24 were contemporaneous with their failure, explaining in terms
12:27PM 25 of their own fault and nothing to do with us.

12:27PM 1 So the rest of the schedule that we propose is, they
12:28PM 2 finish up on the cost discovery, they file their document, we
12:28PM 3 quickly file something in response, we take whatever few
12:28PM 4 depositions are necessary at that point. If experts are going
12:28PM 5 to be permitted or if they think they're needed, it'll take a
12:28PM 6 little adjustment, but we're going to get through with this.
12:28PM 7 And while we're getting through with this, an important part
12:28PM 8 of discovery in this case is also being completed in what I
12:28PM 9 think is going to be in a very expeditious fashion.

12:28PM 10 So what do we get at the end? 3 years have gone by.
12:28PM 11 They're claiming they were denied customers, they won't tell
12:28PM 12 us who the customers are, they won't tell us what we did, they
12:28PM 13 won't tell us what portion of the U.S. Treasury Futures
12:28PM 14 trading was kept away from them. All of that will be forced
12:28PM 15 if we follow this procedure.

12:28PM 16 The most interesting thing about John's explanation
12:28PM 17 of the key word search that tells us that this is going to
12:28PM 18 have a real result is that the 3 firms they name, Serrino
12:29PM 19 Trading, Rand Financial and Nikko, were not even on their list
12:29PM 20 of key words. None of the customers were on their proposed
12:29PM 21 list of key words. If this is really your case, maybe I'm
12:29PM 22 being stupid, maybe I'm falling into a trap, but when I see a
12:29PM 23 list of key words that doesn't even go to the key issue that
12:29PM 24 they've raised in the case and that they're using to get in
12:29PM 25 the federal court and when I get interrogatory answers that

12:29PM 1 don't answer the interrogatories, I feel I'm on a track that's
12:29PM 2 going to lead somewhere.

12:29PM 3 I want to tell you one more thing that's a background
12:30PM 4 fact that I think your Honor ought to know to really
12:30PM 5 understand what's going on here, and, again, why I think is
12:30PM 6 going to resolve the case. Prior to the time that plaintiffs
12:30PM 7 came into the market, they had been the supplier of the
12:30PM 8 electronic system that the Board of Trade used to trade
12:30PM 9 treasury futures products. Every treasury futures trader
12:30PM 10 trading at the Board of Trade was trading on their system.
12:30PM 11 Every treasury futures trader trading at the Board of Trade
12:30PM 12 was clearing its products through the clearing corporation,
12:30PM 13 TCC, Board of Trade Clearing Corporation. The whole fight
12:30PM 14 here and their whole strategy of getting into this market was,
12:30PM 15 they had every trader that was of any importance connected to
12:30PM 16 their system, and trading on their system, and used to this
12:30PM 17 system, and they also had all those traders trading through
12:30PM 18 the clearing corporation.

12:30PM 19 They took over the clearing corporation. They took
12:30PM 20 back the system. The Board of Trade had to go out and buy a
12:31PM 21 new system, had to get a new clearing house, and had to make
12:31PM 22 sure that all the traders would use the new system and that
12:31PM 23 the system would interface properly with the clearing house.
12:31PM 24 This was a big risk. They had a good chance. The Board of
12:31PM 25 Trade succeeded, they failed. But to come in here now and say

12:31PM 1 that they were denied these traders, all of whom were already
12:31PM 2 hooked to the system, is preposterous. And we think that if
12:31PM 3 they're pushed into that posture by a summary judgment motion
12:31PM 4 where they're going to have to respond with affidavits, it
12:31PM 5 will be clearly apparent to the Court that they cannot do it.

12:31PM 6 In the end, I think we can easily show that this is
12:31PM 7 not an anti-trust case, your Honor. The output in the
12:31PM 8 industry is up, the prices are down. USFE is still in the
12:32PM 9 market. 80 percent of it was sold for -- 70 percent was sold
12:32PM 10 for 23 million dollars, the new buyer put 35 million dollars
12:32PM 11 in it. TCC, the clearing house, is still in the market. 3
12:32PM 12 new buyers came in and they're going to put a ton of business
12:32PM 13 through TCC, they just announced it. So nobody has been taken
12:32PM 14 out of the market, prices are down, output is up. This is not
12:32PM 15 an anti-trust case in any sense of the word.

12:32PM 16 I'm prepared to talk about why they actually failed,
12:32PM 17 but I don't think that's relevant at this point. I think for
12:32PM 18 our purposes we can structure a motion that's simple, that's
12:32PM 19 not going to require a ton of discovery, and that's going to
12:32PM 20 shape the future of the case. If we're wrong about this, it's
12:32PM 21 going to change our attitude about what this case is about,
12:32PM 22 your Honor.

12:33PM 23 MR. QUINN: May I?

12:33PM 24 THE COURT: You can, but I will make an offer to you.

12:33PM 25 MR. QUINN: All right.

01:06PM 1 could just ask if we could get those so we can respond to the
01:06PM 2 hearing.

01:06PM 3 MR. SALZMAN: Sure. There's just one, actually,
01:06PM 4 demonstrative, the others --

01:06PM 5 THE COURT: No, that's fine. That's fine.

01:06PM 6 MS. RENDER: Your Honor, may I ask, are you planning
01:06PM 7 to discuss the CBOT second motion to comply with
01:06PM 8 interrogatories in chambers?

01:06PM 9 THE COURT: Not now.

01:06PM 10 MR. QUINN: Your Honor, can we have 3?

01:07PM 11 THE COURT: 3 is fine. It's not going to take long.
01:07PM 12 My clerk will bring you in in a minute.

01:07PM 13

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17 I, BLANCA I. LARA, DO CERTIFY THAT THE FOREGOING IS A CORRECT

18 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

19 ABOVE-ENTITLED MATTER.

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Blanca I. Lara



Date